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In the
Court of Appeals
For the Fourteenth Judicial District of Texas
At Houston

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CHRISTOPHER A. PRINE
Clerk

◆
No. 1527611

In the 208th District Court
Of Harris County, Texas

◆
THE STATE OF TEXAS

Appellant

V.

JOHN WESLEY BALDWIN

Appellee

◆
STATE'S POST-SUBMISSION BRIEF

◆
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TO THE HONORABLE COURT OF APPEALS:

**REPLY TO THIS COURT’S QUESTIONS AT ORAL
ARGUMENT**

- A. *Bass* and *Garcia* support the proposition that a subsequent trial court judge may not disturb the ruling of the prior judge without themselves conducting a hearing where, as here, that prior judge’s ruling was based on evidence presented by live testimony.**

Prior to oral argument in this case in a letter dated December 11, 2019, this Court requested that the parties be prepared to discuss (1) whether Judge Glass made an implied finding of fact that the traffic stop was unlawful, contrary to the oral finding of fact made by Judge Collins; (2) whether Judge Glass was authorized to make that implied finding without the benefit of a live hearing; and (3) what remedy, if any, may be required under *Garcia v. State*, 15 S.W.3d 533, 535 (Tex. Crim. App. 2000) and *Bass v. State*, 626 S.W.2d 769, 775 n.2 (Tex. Crim. App. 1982).

Both parties agree that by granting the appellee’s motion to suppress in its entirety, Glass made an implied finding that the traffic stop was unlawful. *See* C.R. – 96; *see also* Appellee’s Post-Submission Letter at 1) (“Judge Glass did make an implied finding that the traffic stop was unlawful.”). This finding of fact was contrary to the oral findings of Collins, the prior presiding trial court judge. (II R.R. – 4). Collins stated that the court had viewed the videotape and found “that the stop was lawful.” *Id.* Nothing in the record suggests that Glass presided over a hearing.

And, while the video and search warrant affidavit had been admitted as evidence during the hearing before Collins, nothing in the record shows that Glass viewed them or had access to the reporter's record of the hearing prior to making his ruling. (III R.R. – 3-14). Glass made his ruling on January 11, 2019. (C.R. – 96). The reporter's records of the suppression hearing before Collins and Collins's findings and ruling were not filed until March 11, 2019. (I R.R. – 1); (II R.R. – 1).

In *Bass*, the Court of Criminal Appeals noted that a subsequent judge is not required to hold a second hearing on the voluntariness of a confession where that judge bases his or her decision upon the evidence presented at the earlier hearing and adopts the findings and conclusions of the prior judge presiding at that hearing. *Bass*, 626 S.W.2d at 774-75. The court then noted that “different...considerations may arise when,” as in the present case, “the trial judge rejects credibility choices made by another fact-finder.” *Id.* at 775, n.2.

In *Garcia*, the Court of Criminal Appeals again considered a subsequent judge's ruling on the voluntariness of a confession based upon the findings of a previous presiding judge. *Garcia*, 15 S.W.3d 533, 534-35. The court ruled that it was “not appropriate for the second judge” in that case “to make findings of fact based solely on the written transcript of the initial hearing.” *Id.* at 535. The court also noted that it was “inconsistent to restrict an appellate court's review” of a trial

court's findings "because it has nothing to review but a 'cold' record, yet allow a trial judge to make such findings based on nothing but that same 'cold' record." *Id.* In the present case, there is no evidence that Glass even had a cold record of the hearing to review. But even had he reviewed it, he could not have evaluated witness credibility with regard to the ruling by Collins that he disturbed—the lawfulness of the stop.

In the present case, Collins indicated after a hearing with live testimony that she would grant the appellee's motion to suppress with regard to the search warrant, but not with regard to the traffic stop. (II R.R. – 17-18). She therefore found that "the stop was lawful" and that "the phone was lawfully obtained." (II R.R. – 4-5). Without a new hearing, Glass granted the motion to suppress in full—as to both the search warrant, the stop, and, therefore, as to whether the phone was lawfully obtained. In light of *Bass* and *Garcia*, a subsequent judge has two options where a prior judge's findings and rulings were based on a live hearing and involved a credibility evaluation: (1) accept the findings and rulings of the prior judge; or (2) hold a new hearing as the basis for his or her own ruling. *Bass*, 626 S.W.2d at 775, n.2; *Garcia*, 15 S.W.3d at 535. The State therefore maintains that, where, as here, a subsequent judge rules differently than a prior judge without conducting a new hearing to personally evaluate witness demeanor and credibility, the appropriate

remedy is to abate and remand the case to the trial court for a new hearing or a ruling consistent with the findings of the judge who conducted the hearing.

CONCLUSION

It is respectfully submitted that this case should be abated and remanded to the trial court.

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CERTIFICATE OF SERVICE AND COMPLIANCE

This is to certify that: (a) the word count function of the computer program used to prepare this document reports that there are 1,182 words in it; and (b) the undersigned attorney will request that a copy of the foregoing instrument be served by efile.txcourts.gov to:

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